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10/584,204	06/23/2006	Yuko Kubo	292762US0PCT	9114
22850 7590 01/20/2012 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER GWARTNEY, ELIZABETH A				
ART UNIT 1781		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

# Office Action Summary

Application No.

10/584,204

Applicant(s)

KUBO ET AL.

Examiner

ELIZABETH GWARTNEY

Art Unit

1781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 5) ☒ Claim(s) 1-10, 12-17 and 20-26 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-10, 12-17 and 20-26 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/GS-08)  
Paper No(s)/Mail Date 20100713
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 12 February 2010 has been entered.
2. Claims 11, 18 and 19 have been cancelled. Claims 21-26 have been added. **Claims 1-10, 12-17 and 20-26 are pending.**

### *Claim Objections*

3. Claims 23, 24 and 26 are objected to because of the following informalities:
  - Claim 23 (A) recites the term "derives" which appears to be a typographical error and should read "derived."
  - Claims 24 and 26 recite the term "cum" in the phrase "locust bean cum" which appears to be a typographical error of the term "gum."
  - Claims 24 and 26 recite the term "ager" which appears to be a typographical error of the term "agar."

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-10, 12-17 and 20-26 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding **claims 1, 3, 23 and 26**, the recitation "an insoluble substance derived from a vegetable, wherein a content as a dry weight of the insoluble substance in the drink is from 0.1 to 0.6% wt%" renders the claim indefinite. It is not clear what is encompassed by the term "a content." It is unclear if the insoluble substance comprises 0.1 to 0.6% of some unidentified component.

Regarding **claim 8**, the recitation "wherein the vegetable" renders the claim indefinite because it is not clear if the term "vegetable" refers to the type of juice drink or the vegetable from which the insoluble substance is derived. Note, while the claim is directed to a vegetable drink composition, there is no requirement that the composition require a vegetable. Rather, the only vegetable component required is *an insoluble substance derived from a vegetable*.

**Claims 17 and 20** are directed the drink compositions of claims 1 and 3 respectively and recite, "wherein the drink composition is a vegetable and fruit drink composition" renders the claim indefinite. First, given claims 1 and 3 are directed to a vegetable drink and not a drink composition generally, it is unclear how it is also a vegetable and fruit drink composition. In the alternative, it is not clear if the vegetable drink composition of claim 1 comprises a fruit component.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. **Claims 1, 4, 7-10, 12, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoersten et al. (US 4,988,530) in view of Romeo (WO 2004/017759) .**

Regarding **claims 1, 4, 7-8, 12 and 21**, Hoersten et al. disclose a beverage composition comprising tomato juice, water, 0.2-1.2% pectin and 1-4% gum arabic (Abstract, C3/L19-

C4/L3). Hoersten et al. disclose that generally the amount of full strength juice is less than 100% of the beverage liquid or usually in the range of from 5 to 65% (C3/L60-64). Hoersten et al. disclose that full strength juices are used in an amount necessary to obtain the desired taste (C3/L64-68).

While Hoersten et al. disclose tomato juice, the reference does not disclose that the beverage comprises water or, as a dry weight, from 0.1 to 1.2 wt% of an insoluble substance wherein the insoluble substance has a size of 833 um or less.

Romeo teaches a tomato juice composition comprising 5.5-20% dry residue and 94.5-80% water wherein the dry residue includes from 18-70% insoluble solids (Abstract). Romeo also teaches that the insoluble substance has a particle size of 0.5 mm or less (*see* separation liquid solid apparatus reach values not higher than 0.5 mm - p.11/3rd full paragraph). Given Hoersten et al. disclose a beverage comprising from 5 to 65% tomato juice, since Romeo teaches a tomato product comprising 5.5% dry residue wherein the residue includes from 18-70% insoluble solids, it is clear that the beverage would comprise from 0.05 to 2.5% insoluble solids, i.e. insoluble substance.

Hoersten et al. and Romeo are combinable because they are concerned with the same field of endeavor, namely, tomato juice products. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used a tomato juice comprising from 0.05 to 2.5 % insoluble solids wherein the insoluble solids have a particle size of less than 0.5 mm, as taught by Romeo, as the tomato juice ingredient in the beverage of Hoersten et al., because doing so would amount to nothing more than a use of a known tomato juice product for its intended use in a known environment to accomplish entirely expected result

Regarding the range of insoluble solids disclosed by the prior art, as set forth in MPEP 2144.05, in the case where the claimed range “overlap or lie inside ranges disclosed by the prior art”, a *prima facie* case of obviousness exists, *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

Regarding **claims 9-10**, modified Hoersten et al. disclose all of the claim limitations as set forth above. Hoersten et al. also disclose that the beverage is subjected to commercial sterilization temperatures and packaged (C4/L29-35).

Regarding claim 17, modified Hoersten et al. disclose all of the claim limitations as set forth above and that the beverage composition is a fruit or vegetable juice drink (C3/L45-47).

**10. Claims 2, 6 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoersten et al (US 4,988,530) in view of Romeo (WO 2004/017759) and applied to claim 1, and further in view of Wang et al. (US 6,004,610).**

Regarding **claims 2 and 13**, modified Hoersten et al. disclose all of the claim limitations as set forth above. While Hoersten et al. disclose a beverage composition comprising an acidic polysaccharide water-soluble dietary fiber (i.e. Pectin - Abstract), the reference does not explicitly disclose a beverage comprising a neutral polysaccharide water-soluble dietary fiber.

Wang et al. teach a dietary fiber enriched beverage comprising 1.5-10% of a fiber blend that includes hydrolyzed guar gums and arabinogalactan (Abstract). Wang et al. teaches that hydrolyzed guar gum and arabinogalactan are used because of their low viscosity, lightness in color, and lack of taste (C2/L33-35).

Hoersten et al. and Wang et al. are combinable because they are concerned with the same field of endeavor, namely, soluble dietary fiber containing beverages. It would have been obvious to one of ordinary skill in the art to have added the arabinogalactan and hydrolyzed guar gum blend taught by Wang et al. to the soluble dietary fiber fortified beverage of Hoersten et al. for the purpose of increasing the dietary fiber content of the beverage without increasing viscosity or negatively impacting the color and taste of the beverage product.

Regarding claims **6 and 14**, modified Hoersten et al. disclose all of the claim limitations as set forth above. Given that Hoersten et al. disclose a beverage composition comprising 1.2-5.2% of acidic polysaccharide water-soluble dietary fiber, since Wang et al. disclose a beverage composition with 1.5-10% of a neutral polysaccharide water-soluble dietary fiber blend, it is clear that the total content of dietary fiber in the beverage of modified Hoersten et al. would range from 2.7-15.2%.

**11. Claims 3, 5, 20, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoersten et al. (US 4,988,530) in view of Romeo (WO 2004/017759) and Wang et al. (US 6,004,610).**

Regarding **claims 3, 5, 22 and 26**, Hoersten et al. disclose a beverage composition comprising tomato juice, water, 0.2-1.2% pectin and 1-4% gum arabic (Abstract, C3/L19-C4/L3). Hoersten et al. disclose that generally the amount of full strength juice is less than 100% of the beverage liquid or usually in the range of from 5 to 65% (C3/L60-64). Hoersten et al. disclose that full strength juices are used in an amount necessary to obtain the desired taste (C3/L64-68).



While Hoersten et al. disclose tomato juice, the reference does not disclose, as a dry weight, from 0.1 to 1.2 wt% of an insoluble substance wherein the insoluble substance has a size of 833 um or less. Further, while Hoersten et al. disclose an acidic polysaccharide water-soluble dietary fiber, the reference does not disclose a beverage composition comprising a neutral polysaccharide water-soluble dietary fiber.

Romeo teaches a tomato juice composition comprising 5.5-20% dry residue and 94.5-80% water wherein the dry residue includes from 18-70% insoluble solids (Abstract). Romeo also teaches that the insoluble substance has a particle size of 0.5 mm or less (*see* separation liquid solid apparatus reach values not higher than 0.5 mm - p.11/3rd full paragraph). Given Hoersten et al. disclose a beverage comprising from 5 to 65% tomato juice, since Romeo teaches a tomato product comprising 5.5% dry residue wherein the residue includes from 18-70% insoluble solids, it is clear that the beverage would comprise from 0.05 to 2.5% insoluble solids, i.e. insoluble substance.

Hoersten et al. and Romeo are combinable because they are concerned with the same field of endeavor, namely, tomato juice products. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used a tomato juice comprising from 0.05 to 2.5 % insoluble solids wherein the insoluble solids have a particle size of less than 0.5 mm, as taught by Romeo, as the tomato juice ingredient in the beverage of Hoersten et al., because doing so would amount to nothing more than a use of a known tomato juice product for its intended use in a known environment to accomplish entirely expected result

Regarding the range of insoluble solids disclosed by the prior art, as set forth in MPEP 2144.05, in the case where the claimed range "overlap or lie inside ranges disclosed by the prior

art”, a *prima facie* case of obviousness exists, In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

Wang et al. teach a dietary fiber enriched beverage comprising 1.5-10% of a fiber blend that includes hydrolyzed guar gums and arabinogalactan (Abstract). Wang et al. teaches that hydrolyzed guar gum and arabinogalactan are used because of their low viscosity, lightness in color, and lack of taste (C2/L33-35).

Hoersten et al. and Wang et al. are combinable because they are concerned with the same field of endeavor, namely, soluble dietary fiber containing beverages. It would have been obvious to one of ordinary skill in the art to have added the arabinogalactan and hydrolyzed guar gum blend taught by Wang et al. to the soluble dietary fiber fortified beverage of Hoersten et al. for the purpose of increasing the dietary fiber content of the beverage without increasing viscosity or negatively impacting the color and taste of the beverage product.

Regarding **claim 20**, modified Hoersten et al. disclose all of the claim limitations as set forth above and that the beverage composition is a fruit or vegetable juice drink (C3/L45-47).

**12. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoersten et al. (US 4,988,530) in view of Romeo (WO 2004/017759) and applied to claim 1, and further in view of Iwata et al. (US 5,324,526).**

Regarding **claims 15-16**, modified Hoersten et al. disclose all of the claim limitations as set forth above. While Hoersten et al. disclose an acidic polysaccharide water-soluble dietary fiber including pectin (Abstract), the reference does not explicitly disclose alginic acid, depolymerized alginic acid or low-molecular weight pectin.

Iwata et al. teach a beverage comprising 1% to 50% by weight of a water-soluble algin, i.e. alginic acid (Abstract, C2/L64-66, C3/L36-43) . Iwata et al. teach that alginic acid functions as a dietary fiber and has beneficial effects on the health including effectively suppressing an abnormal increase in blood glucose and insulin levels caused by excessive intake of carbohydrates and sugars (Abstract, C5/L31-35).

Hoersten et al. and Iwata et al. are combinable because they are concerned with the same field of endeavor, namely soluble fiber containing beverages. It would have been obvious to one of ordinary skill in the art to have used alginic acid, as taught by Iwata et al., for a soluble dietary fiber in the beverage of Hoersten et al. because doing so would amount to nothing more than the use of a known soluble dietary fiber, having beneficial effects on health, for its intended use in a known environment to accomplish entirely expected results.

**13. Claims 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoersten et al. (US 4,988,530) in view of Romeo (WO 2004/017759) and Iwata et al. (US 5,324,526).**

Regarding **claims 23 and 25**, Hoersten et al. disclose a beverage composition comprising tomato juice, water, 0.2-1.2% pectin and 1-4% gum arabic (Abstract, C3/L19-C4/L3). Hoersten et al. disclose that generally the amount of full strength juice is less than 100% of the beverage liquid or usually in the range of from 5 to 65% (C3/L60-64). Hoersten et al. disclose that full strength juices are used in an amount necessary to obtain the desired taste (C3/L64-68).

While Hoersten et al. disclose tomato juice, the reference does not disclose that the beverage comprises water or, as a dry weight, from 0.1 to 1.2 wt% of an insoluble substance wherein the insoluble substance has a size of 833 um or less.

Romeo teaches a tomato juice composition comprising 5.5-20% dry residue and 94.5-80% water wherein the dry residue includes from 18-70% insoluble solids (Abstract). Romeo also teaches that the insoluble substance has a particle size of 0.5 mm or less (*see* separation liquid solid apparatus reach values not higher than 0.5 mm - p.11/3rd full paragraph). Given Hoersten et al. disclose a beverage comprising from 5 to 65% tomato juice, since Romeo teaches a tomato product comprising 5.5% dry residue wherein the residue includes from 18-70% insoluble solids, it is clear that the beverage would comprise from 0.05 to 2.5% insoluble solids, i.e. insoluble substance.

Hoersten et al. and Romeo are combinable because they are concerned with the same field of endeavor, namely, tomato juice products. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used a tomato juice comprising from 0.05 to 2.5 % insoluble solids wherein the insoluble solids have a particle size of less than 0.5 mm, as taught by Romeo, as the tomato juice ingredient in the beverage of Hoersten et al., because doing so would amount to nothing more than a use of a known tomato juice product for its intended use in a known environment to accomplish entirely expected result

Regarding the range of insoluble solids disclosed by the prior art, as set forth in MPEP 2144.05, in the case where the claimed range “overlap or lie inside ranges disclosed by the prior art”, a *prima facie* case of obviousness exists, *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

While Hoersten et al. disclose an acidic polysaccharide water-soluble dietary fiber including pectin (Abstract), the reference does not explicitly disclose alginic acid, depolymerized alginic acid or low-molecular weight pectin.

Iwata et al. teach a beverage comprising 1% to 50% by weight of a water-soluble algin, i.e. alginic acid (Abstract, C2/L64-66, C3/L36-43) . Iwata et al. teach that alginic acid functions as a dietary fiber and has beneficial effects on the health including effectively suppressing an abnormal increase in blood glucose and insulin levels caused by excessive intake of carbohydrates and sugars (Abstract, C5/L31-35).

Hoersten et al. and Iwata et al. are combinable because they are concerned with the same field of endeavor, namely soluble fiber containing beverages. It would have been obvious to one of ordinary skill in the art to have used alginic acid, as taught by Iwata et al., for a soluble dietary fiber in the beverage of Hoersten et al. because doing so would amount to nothing more than the use of a known soluble dietary fiber, having beneficial effects on health, for its intended use in a known environment to accomplish entirely expected results.

**14. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoersten et al. (US 4,988,530) in view of Romeo (WO 2004/017759) and Iwata et al. (US 5,324,526) as applied to claim 23 and further in view of Wang et al. (US 6,004,610).**

Regarding **claim 24**, modified Hoersten et al. disclose all of the claim limitations as set forth above. Hoersten et al. does not disclose wherein the vegetable drink composition comprising at least one neutral polysaccharide water-soluble dietary fiber.

Wang et al. teach a dietary fiber enriched beverage comprising 1.5-10% of a fiber blend that includes hydrolyzed guar gums and arabinogalactan (Abstract). Wang et al. teaches that hydrolyzed guar gum and arabinogalactan are used because of their low viscosity, lightness in color, and lack of taste (C2/L33-35).

Hoersten et al. and Wang et al. are combinable because they are concerned with the same field of endeavor, namely, soluble dietary fiber containing beverages. It would have been obvious to one of ordinary skill in the art to have added the arabinogalactan and hydrolyzed guar gum blend taught by Wang et al. to the soluble dietary fiber fortified beverage of Hoersten et al. for the purpose of increasing the dietary fiber content of the beverage without increasing viscosity or negatively impacting the color and taste of the beverage product.

### ***Response to Arguments***

15. Applicants' arguments filed 12 February 2010 have been fully considered but they are not persuasive.

Applicants argue that the combination of the references does not describe or suggest a vegetable drinking comprising the claimed insoluble substance or the specific acidic and neutral polysaccharide water-soluble dietary fibers.

Applicants note that Hoersten et al. disclose when the insoluble fibers are incorporated in the juice product, it is difficult to maintain proper suspension and dispersion and the insoluble fiber tends to settle to the bottom of the drink and the insoluble fiber can provide the liquid food with a gritty texture and an unpleasant taste (C1/L43-61). Applicants note substituting the dietary fibers, i.e. gum arabic and pectin, of Hoersten et al. with the claimed specific

polysaccharide water-soluble dietary fiber would not have been obvious because Hoersten et al. explicitly suggest using a gum arabic and pectin to maintain proper suspension and dispersion. "One would not have reasonably expected that substituting a gum arabic and pectin for different fibers would have maintained the fibers in suspension and would not have caused a gritty texture and an unpleasant taste without actually conducting experiments based on the warning of Hoersten et al. with regard to fibers (see col. 1-2)."

First, with regards to a neutral polysaccharide water-soluble dietary fiber, it is not suggested that the hydrolyzed guar gum and arabinogalactan fiber blend replace the gum arabic and pectin combination disclosed by Hoersten et al., but rather to have added it to increase the dietary fiber content of the beverage without increasing the viscosity or negatively impacting the color and taste of the beverage.

With regards to the use of alginic acid as an acidic polysaccharide water-soluble dietary fiber, given Iwata et al. teach a beverage with high algin content, substantial enough to achieve the beneficial effects of algin on health, have a good taste and easy to drink, one of ordinary skill in the art would have found it obvious to try alginic acid. Further one of ordinary skill in the art would have reasonably expected that substituting alginic acid for gum arabic and pectin in the beverage of Hoersten et al. would have maintained the fibers in suspension and would not have cause a gritty texture and an unpleasant taste.

Applicants submit that Romeo describes a tomato product obtained from tomato juice and that the goal of Romeo is to produce a tomato product that does not need to be diluted or concentrated before use on food and has an improved saucing powder and devoid of any caramel taste and bitter taste and is better for cooking. Therefore, Applicants argue that "[o]ne would not

have been motivated to sue the insoluble solids of Romeo et al. that are specifically adjusted for sauces and pastes for foods and cooking in a liquid product such as juice of Hoersten et al. because (a) Hoersten et al. and Romeo achieve a different goal (liquid juice devoid of any dispersion or a sediment at the bottom of Hoersten et al. verses a paste-like foods and cooking sauce of Romeo) and (b) Hoersten et al. explicitly discuss that a suspension or dispersion of insoluble solids does not satisfy a demand of consumer and that gritty texture and an unpleasant taste caused by insoluble solids is avoided in a liquid juice composition of Hoersten et al.”

It is the Examiner’s position that Romeo is directed to a range of tomato products including those equivalent in composition to a tomato juice. Romeo teaches a tomato product composition comprising 5.5-20% dry residue and 94.5-80% water wherein the dry residue includes from 18-70% insoluble solids (Abstract). Romeo also teaches that the insoluble substance has a particle size of 0.5 mm or less (*see* separation liquid solid apparatus reach values not higher than 0.5 mm - p.11/3rd full paragraph). Given Romeo teaches a tomato product comprising 94.5% water, it is clear that a product equivalent to tomato juice is taught.

While Hoersten et al. discuss that a suspension or dispersion of insoluble solids does not satisfy a demand of consumer, the discussion is of insoluble solids is directed to the inclusion of specific dietary fibers. Given Hoersten et al. disclose a liquid carrier of vegetable juices including tomato, celery and carrot, it necessarily follows that the juices would have intrinsically comprise insoluble solids.

### ***Conclusion***



Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH GWARTNEY whose telephone number is (571)270-3874. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ELIZABETH GWARTNEY/  
Primary Examiner, Art Unit 1781